

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.9.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.28072 of 2015
and
M.P.No.1 of 2015

Andi Gounder

...Petitioner

vs.

1. The Sub Divisional Executive Magistrate Cum
Revenue Divisional Officer,
Tiruvannamalai
2. The Inspector of Police
Veraiyur Police Station
Tiruvannamalai District
3. Marimuthu

...Respondents

Writ petition filed under Article 226 of the Constitution of India for a writ of Certiorari to call for the records from the 1st respondent pertaining to the impugned summon through proceedings No.M.C.A4/5094/2015 dated 04.8.2015 and quash the same.

For Petitioner : Mr.M.R.Senthilkumar

For Respondents 1 & 2 : Mr.C.Emalias
Additional Public Prosecutor

ORDER

Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for respondents 1 and 2. By consent, the writ petition itself is taken up for final disposal at the time of admission.

2. In this writ petition, the petitioner has challenged the order passed by the first respondent dated 04.8.2015, by invoking a power under Section 107 Cr.P.C.

3. The case of the petitioner, as stated in the affidavit, filed in support of this Writ Petition, in short, is that the third respondent had occupied the Survey No.264, in C.Vadakuthangal village, Trivunnamalai, which has been classified as canal porambokku in revenue records by constructing a house and thereby obstructed the water passing through other agricultural lands belongs to the petitioner and other village people. Therefore, the petitioner and other village people sent a representation on 31.12.2012 to the District Collector of Tiruvannamalai for removing the encroachment made upon the Canal. Since the same was not considered, the petitioner has filed Writ petition No.7555 of 2014 before this Court and this Court, by order dated 08.9.2014, directed the respondent to pass final orders. Subsequent to the said direction, the encroachment in the Canal was demolished by the authorities on 07.01.2015. In the meantime, the third respondent herein filed a suit in O.S.No.39 of 2013 before the District Munsif Court, Tiruvannamalai and also lodged complaint before the second respondent against the petitioner and his family members and FIR has also been registered by the second respondent under Section 107 of Cr.P.C. Based on the FIR, the first respondent herein issued summon dated 04.8.2015 under Section 111 of Cr.P.C and directed the petitioner and three others to appear before him on 14.9.2015 at 11.A.M. Aggrieved over the said summons, the petitioner has come up with the present writ petition.

4. Learned counsel for the petitioner submitted that as per Section 107 of Cr.P.C., notice cannot be issued both to "A" party and "B" party in one and the same proceedings. The learned counsel for the petitioner also relied on the unreported judgment of the Madurai Bench of this Court in W.P.(MD).No.7616 of 2014 to W.P.(MD) No.7628 of 2014 in support of the said contention.

5. I have heard the learned Additional Public Prosecutor on the submission made by the learned counsel for the petitioner.

6. Based on the FIR registered by the second respondent, the first respondent issued summons to "A" party (petitioner herein) and "B" party (third respondent herein) by clubbing both of them together. This Court repeatedly held that if an order under Section 107 Cr.P.C. has been passed against "A" party and "B" party by clubbing both of them together, the same has to be held as bad in

law. It is useful to extract the unreported judgment of the Madurai Bench of this Court in W.P.(MD).No.7616 of 2014 to W.P.(MD) No.7628 of 2014, wherein this Court, by following the earlier decision of this Court, has held as follows:-

"5. The law relating to the manner in which the proceeding under Section 107 Cr.P.C. has to be proceeded with, has been considered by this Court and one of the recent decisions is in K.Rajasekar @ Rajkumar and Others v. The Sub Collector cum Sub Divisional Magistrate, Nagercoil Sub Division reported in 2013 (1) T.N.L.R.481 (Mad) (MB). In the said decision, this Court also referred to the earlier decision on that point in Athianna Gounder and others v. Nachiappan and others reported in 1982 LW (CrL.) 61. In terms of the above decisions, if an order under Section 107 Cr.P.C. has been passed against 'A' party and 'B' party by clubbing both of them together, the same has to be held as bad in law. This has been the consistent view taken by this Court in all the earlier decisions. In fact, this Court while passing the interim order in these writ petitions also took into consideration the above said decision in K.Rajasekar @ Rajkumar and Others v. The Sub Collector cum Sub Divisional Magistrate, Nagercoil Sub Division reported in 2013 (1) T.N.L.R. 481 (Mad) (MB) and granted interim order. On a perusal of the impugned order, it is evidently clear that the mandatory provisions of Sections 107 and 111 Cr.P.C. have not been followed before issuing the impugned summons. Therefore, on this short ground itself, the petitioners are entitled to succeed. Accordingly, these writ petitions are allowed and the impugned summonses dated 08.4.2014 are set aside. Needless to state that it is always open to the authority to proceed in accordance with law, if situation warrants. No costs. Consequently, connected Miscellaneous petitions are closed."

7. In view of the above decision and in order to avoid further delay in proceeding the matter, instead of admitting the writ petition and issuing notice to the third respondent, the writ petition is disposed of at the admission stage, by setting aside the impugned summon dated 04.8.2015 in proceedings No.M.C.A4/5094/2015, with a direction to the first respondent to issue fresh summon

separately to both "A" party and "B" party and proceed further without any delay. No costs. Consequently, connected M.P is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ga

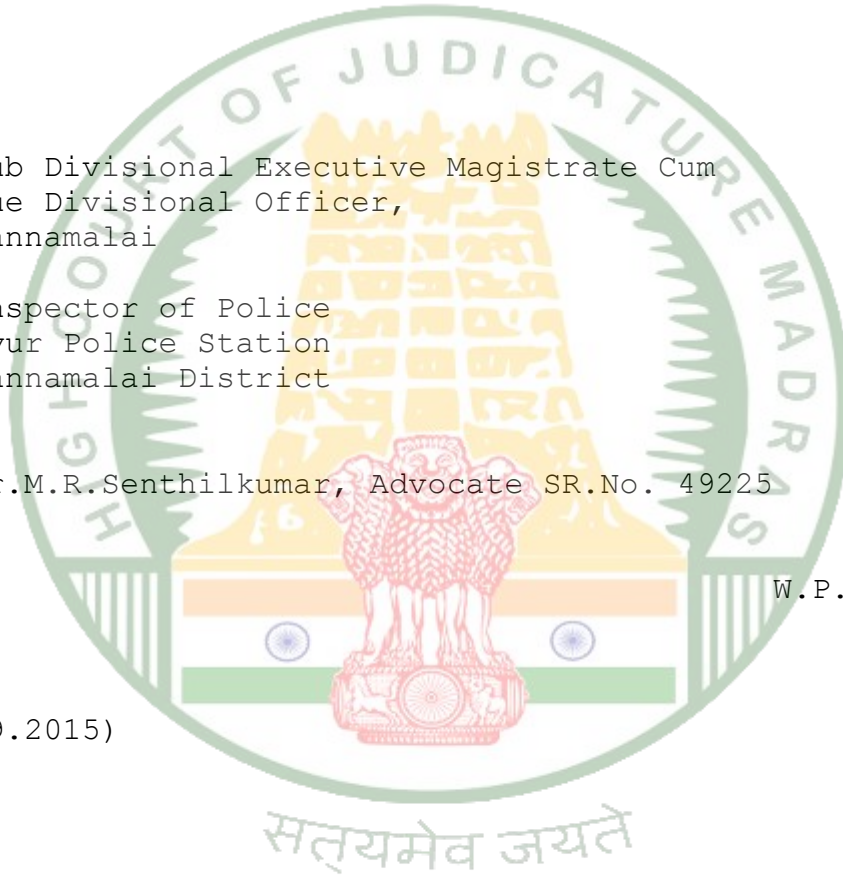
To

1. The Sub Divisional Executive Magistrate Cum
Revenue Divisional Officer,
Tiruvannamalai
2. The Inspector of Police
Veraiyur Police Station
Tiruvannamalai District

1 CC to Mr.M.R.Senthilkumar, Advocate SR.No. 49225

W.P.No.28072 of 2015

MSM (CO)
PSI (11.09.2015)



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